



PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298

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TO PARTIES OF RECORD IN CASE 21-05-005:

This proceeding was filed on May 4, 2021, and is assigned to Commissioner Genevieve Shiroma and Administrative Law Judge (ALJ) Zita Kline. This is the decision of the Presiding Officer, ALJ Kline.

Any party to this adjudicatory proceeding may file and serve an Appeal of the Presiding Officer's Decision within 30 days of the date of issuance (i.e., the date of mailing) of this decision. In addition, any Commissioner may request review of the Presiding Officer's Decision by filing and serving a Request for Review within 30 days of the date of issuance.

Appeals and Requests for Review must set forth specifically the grounds on which the appellant or requestor believes the Presiding Officer's Decision to be unlawful or erroneous. The purpose of an Appeal or Request for Review is to alert the Commission to a potential error, so that the error may be corrected expeditiously by the Commission. Vague assertions as to the record or the law, without citation, may be accorded little weight.

Appeals and Requests for Review must be served on all parties and accompanied by a certificate of service. Any party may file and serve a Response to an Appeal or Request for Review no later than 15 days after the date the Appeal or Request for Review was filed. In cases of multiple Appeals or Requests for Review, the Response may be to all such filings and may be filed 15 days after the last such Appeal or Request for Review was filed. Replies to Responses are not permitted. (See, generally, Rule 14.4 of the Commission's Rules of Practice and Procedure at www.cpuc.ca.gov.)

If no Appeal or Request for Review is filed within 30 days of the date of issuance of the Presiding Officer's Decision, the decision shall become the decision of the Commission. In this event, the Commission will designate a decision number and advise the parties by letter that the Presiding Officer's Decision has become the Commission's decision.

/s/ ANNE E. SIMON

Anne E. Simon

Chief Administrative Law Judge

AES:lil

Attachment

ALJ/POD-ZK1/liI

PRESIDING OFFICER'S DECISION OF ALJ KLINE (Mailed 2/23/2022)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Monterey Peninsula Water
Management District,

Complainant,

vs.

California American Water Company
(U210W),

Defendant.

Case 21-05-005

David C. Laredo, De LAY & LAREDO, Attorney at Law,
for Monterey Peninsula Water Management District,
Complainant.

Sarah E. Leeper, Lori Anne Dolqueist, Attorneys at Law,
for California-American Water Company, Defendant.

**DECISION DISMISSING MONTEREY PENINSULA WATER MANAGEMENT
DISTRICT'S COMPLAINT ALLEGING CALIFORNIA-AMERICAN WATER
COMPANY FAILED TO PROVIDE AN ADEQUATE WATER SUPPLY TO
CUSTOMERS ON THE MONTEREY PENINSULA AS MOOT**

Summary

This decision dismisses the complaint of the Monterey Peninsula Water Management District against California-American Water Company for alleged failure to provide an adequate water supply to its customers on the Monterey Peninsula as moot. This proceeding is closed.

1. Factual Background

Complainant Monterey Peninsula Water Management District (MPWMD) is a public agency created by the MPWMD Law for the “management and regulation of the use, reuse, reclamation, conservation of water[,] and bond financing of public works projects” on the Monterey Peninsula.¹

Defendant California-American Water Company (California American Water) is a Class A investor-owned utility, which serves most of the Monterey Peninsula (also known as the Monterey Main System)² and a number of small satellite systems along the Highway 68 corridor east of the City of Monterey.^{3,4}

1.1. Water Supply Constraints in California American Water’s Service Area

The water supply on the Monterey Peninsula is constrained and water rights in the area have been adjudicated on numerous occasions.⁵ Of note in this proceeding, the State Water Resources Control Board (SWRCB) issued order WR 95-10 in 1995, finding that California American Water had been diverting an

¹ Stats. 1977, ch. 527, at 1672, § 2, Deering’s Water-Uncod. Acts (2008 Supp.) Act 5065, at 235.

² Communities served on the Monterey Peninsula include: Carmel-by-the-Sea, Del Rey Oaks, Monterey, Pacific Grove, Sand City, and Seaside, and the unincorporated areas of Carmel Highlands, Carmel Valley, Pebble Beach, and the Del Monte Forest.

³ The satellite cities include the unincorporated communities of Bishop, Hidden Hills, Ryan Ranch, Ambler, Chualar, Garrapata, and Toro.

⁴ Decision (D.) 18-09-017 at 3.

⁵ *Id.* at 4.

average of 14,106 acre-feet per year (afy) from the Carmel River when it only had a legal right to 3,376 afy. WR 95-10 required California American Water to replace the unlawful diversion of 10,370 afy by acquiring additional water rights or by securing additional sources of water. In 2009, the SWRCB set a deadline of December 31, 2016, for the termination of California American Water's unlawful diversions from the Carmel River.⁶

In 2016, the SWRCB extended the deadline for California American Water to comply with the cease-and-desist order, from December 31, 2016 to December 31, 2021.⁷ In 2018, the Commission found that California American Water needed to secure an additional 4,956 afy of water from an alternative water source by December 31, 2021 in order to comply with SWRCB's cease and desist order WR 2016-0016.⁸

1.2. Water Supply Planning in California American Water's Service Area

The Monterey Peninsula Water Supply Project (MPWSP) was proposed by California American Company to meet the need for additional water supplies in California American Water's service area. The MPWSP affects California American Water's customers in the Monterey Main System, Bishop, Hidden Hills, and Ryan Ranch.⁹

The instant complaint relates to three water supply projects contemplated by variations of the MPWSP, including: 1) the Pure Water Monterey Groundwater Replenishment Project (PWM Project), which was approved by the

⁶ SWRCB Order WR 2009-0060.

⁷ SWRCB Order WR 2016-0016.

⁸ D.18-09-017 at 66.

⁹ *Id.* at 3.

Commission in D.16-09-027; 2) a 6.4 mgd (million gallons per day) desalination plant, which was approved by the Commission in D.18-09-017; and 3) a proposed project expanding the capacity of the PWM project by up to 2,250 afy (PWM Project expansion).

1.2.1. PWM Project

The PWM Project treats, then injects treated wastewater into the Seaside Groundwater Basin aquifer, for subsequent extraction of the treated water for potable use. Monterey One Water (M1W), previously named the Monterey Regional Water Pollution Control Agency, operates the wastewater treatment plant and sells the treated groundwater to MPWMD. MPWMD then sells the water to municipal and public utilities, including California American Water.

In 2016, the Commission approved a Water Purchase Agreement (WPA) between California American Water, M1W, and MPWMD to supply 3,500 afy of water from the PWM Project to California American Water.¹⁰ The PWM Project began operations on February 7, 2020 and delivered 990 acre-feet (af) in 2020.¹¹ MPWMD expected the PWM Project to deliver 3,500 af in 2021.¹²

1.2.2. Desalination Plant

In 2018, the Commission authorized construction of a 6.4 mgd desalination plant in D.18-09-017. At the time of the decision, the desalination plant was expected to be operational by December 31, 2021. The Commission found that the desalination plant (expected to produce 6,250 afy in non-drought years and 7,167 afy in drought years) would meet California American Water's need for an additional 4,956 afy of water from an alternative water source by

¹⁰ D.16-09-021.

¹¹ Complaint at 7.

¹² *Ibid.*

December 31, 2021, which would in turn in comply with SWRCB Order WR 2016-0016. The Commission also indicated an intent to require California American Water to submit a separate application or issue an Order Instituting Investigation to determine the reasonableness of [California American Water's] expenditures, if the desalination plant was not constructed in a timely manner or failed to operate appropriately.¹³

To date, the 6.4 mgd desalination plant has not been constructed. Since the issuance of D.18-09-017, California American Water's application for a Coastal Development Permit with the California Coastal Commission has been rejected multiple times as incomplete, with the most recent rejection letter dated June 18, 2021.¹⁴ The 6.4 mgd desalination plant is expected to take 24 months to construct, and construction cannot begin until after California American Water receives a Coastal Development Permit for the project.

1.2.3. PWM Project Expansion

In 2018, the Commission considered adoption of the PWM Project expansion but deferred approval of the project because: 1) at that time, the PWM Project was not a proven technology and 2) it did not meet groundwater peak flow or peak day flow requirements for California American Water's water supply needs.¹⁵

Instead, the Commission directed California American Water to report the feasibility of entering into an WPA for the PWM Project expansion by a Tier 2

¹³ D.18-09-017 at 211 (Ordering Paragraph (OP) 35).

¹⁴ See Complaint, Attachment A (Cal. Coastal Com. Letter, Notice of Incomplete Coastal Development Permit, dated December 3, 2020); see also Response to Motion to Dismiss, Attachment A (Cal. Coastal Com. Letter, Notice of Incomplete Application No. 9-20-0603 – California American Water Company, dated June 18, 2021.)

¹⁵ D.18-09-017 at 211 (FOFs 18,19).

advice letter within 180 days of the issuance of D.18-09-017.¹⁶ On March 19, 2019, California American Water filed Advice Letter 1231, stating it did not intend to seek a WPA for the PWM Project expansion because it expected the desalination plant to be completed by December 31, 2021.

The Commission also allowed California American Water to submit an application for approval of the WPA for the PWM Project expansion for up to 2,250 afy through an application which included the following: 1) sources of supply water, 2) development costs, 3) prices for sales of the developed water, 4) contractual details, 5) environmental effects, 6) potential to obtain necessary permits, 7) water quality, 8) sources of funding, 9) possible related facilities, and 10) other information necessary and relevant for the Commission to make an informed, just and reasonable decision including details as to supply and production including not only during average rainfall years but also during a multi-year drought and the timing of expanded production.¹⁷

Steps have been taken to implement the PWM Project expansion. On April 26, 2021, the MPWMD certified the Supplemental Environmental Impact Report (SEIR) for the PWM Project expansion. The negotiating parties prepared a draft WPA, which was issued for public comment, and on which public comments were submitted on August 16, 2021.¹⁸ M1W, MPWMD, and California American Water also agreed on the terms for a WPA for the PWM Project expansion on September 22, 2021.¹⁹

¹⁶ *Ibid.* (OP 37).

¹⁷ *Id.* at 42-43.

¹⁸ Appeal at 11.

¹⁹ Application (A.) 21-11-024 Application at Attachment A.

2. Procedural Background

On May 4, 2021, MPWMD filed a complaint against California American Water, alleging California American Water failed to ensure an adequate water supply to the Monterey Peninsula. The Commission issued an Instruction to Answer on May 19, 2021.²⁰ The assigned Administrative Law Judge (ALJ) (ALJ Kline) set a prehearing conference by ruling, dated June 9, 2021. ALJ Kline reset the prehearing conference by ruling, dated June 14, 2021. The Marina Coast Water District (MCWD) filed a motion for party status on July 7, 2021.

California American Water filed an Answer to the Complaint, on June 18, 2021, concurrently with a Motion to Dismiss the Complaint of MPWMD (Motion to Dismiss). MPWMD filed a Response to California American Water's Motion to Dismiss (Response) on July 6, 2021.

A prehearing conference was held on July 8, 2021. At the prehearing conference, ALJ Kline granted party status to the MCWD and M1W.²¹

On August 12, 2021, ALJ Kline issued a Presiding Officer's Decision (POD) dismissing the complaint as premature and directing California American Water to file an application updating its MPWSP within 120 days of the effective date of the decision. MPWMD filed an appeal of the POD (Appeal) on August 20, 2021. MCWD filed a response to the Appeal on September 3, 2021. California American Water filed a response to the Appeal on September 7, 2021.

The Modified POD (MOD POD) appeared on the agenda for the Commission's October 7, 2021 Commission agenda meeting. On September 28, 2021, MPWMD requested that ALJ Kline hold the MOD POD

²⁰ Response, Attachment A.

²¹ M1W made an oral motion for party status at the prehearing conference.

because MPWMD, M1W, and California American Water had reached agreement on the terms of a WPA for the PWM Project expansion. California American Water and MCWD e-mailed responses to MPWMD's e-mail on September 28, 2021 and September 29, 2021, respectively. On October 6, 2021, ALJ Kline issued a ruling which acknowledged MPWMD, M1W, and California American Water's agreement on the terms of a WPA for the PWM Project expansion, indicated that an ALJ Division hold would be placed on the agenda item, reopened the record of the proceeding, and directed parties to file a joint case management statement in light of changed factual circumstances.

With the record reopened, the MOD POD was subsequently withdrawn to provide parties an opportunity to address whether the complaint should be dismissed. On October 21, 2021, California American Water, separately, and MPWMD, M1W, and MCWD, jointly, filed case management statements in response to the ALJ Ruling, as discussed in Section 4 below.

On October 26, 2021, ALJ Kline issued a ruling ordering California American Water to file an application for approval of the WPA for the PWM Project expansion within 30 days, held the proceeding in abeyance for 30 days, and set a status conference for December 15, 2021. On November 29, 2021, California American Water timely filed A.21-11-024, requesting Commission approval of the WPA for the PWM Project expansion and associated cost recovery; as well as an update to its supply and demand estimates for the MPWSP.

A status conference was held on December 15, 2021, wherein the parties did not unanimously agree to dismiss the complaint as moot, as discussed in Section 4 below. This matter was deemed submitted on December 15, 2021.

3. Jurisdiction

Section 701 of the Public Utilities Code allows the Commission to “supervise and regulate every public utility in the State and do all things . . . which are necessary and convenient in the exercise of such power and jurisdiction.” The Commission is also statutorily authorized to hear complaints pursuant to Section 1702 of the Public Utilities Code.²² In addition, Section 1702 of the Public Utilities Code states, in relevant part, that the Commission will not entertain a complaint “as to the reasonableness of any rates or charges of any . . . water . . . corporation, unless it is signed by . . . [a] legislative body of the city or city and county within which the alleged violation occurred”

The Commission has jurisdiction to hear allegations against California American Water which implicate the reasonableness of its rates or charges because it is a certificated public utility in the State of California, and the MPWMD is a legislative body within which the alleged violation occurred.

4. Dismissal of Complaint as Moot

The Commission will dismiss a complaint as moot when the complainant’s requested relief is granted during the course of the proceeding.²³ MPWMD’s

²² The Commission is also statutorily authorized to hear complaints brought by public utilities pursuant to Section 1707 of the Public Utilities Code, though this statute is not implicated in this complaint.

²³ D.21-05-023 (dismissing complaint as moot when complainant’s request to be reinstated on the California Alternative Rates for Energy program was granted during the course of the proceeding and Complainant’s request for a Commission investigation into the recertification process for potentially discriminatory practices against veterans was dismissed as procedurally improper); D.19-09-040 (dismissing complaint as moot when complainants’ request for relief of alleged overbilling was addressed by another Commission decision and complainants’ request for a Commission investigation was addressed in an existing Commission Order Instituting Investigation); D.16-08-005 (dismissing complaint against utility related to its vegetation management when utility installed a taller pole during the course of the proceeding, rendering further vegetation management on the complainant’s property unnecessary); D.11-12-029 (dismissing complaint as moot when complainant received full reparations for alleged billing

Footnote continued on next page.

requested relief in this complaint was a Commission order for California American Water to enter into a WPA with M1W and MPWMD for the PWM Project expansion. The parties reached agreement on the WPA for the PWM Project expansion on September 22, 2021.

In response to ALJ Kline's ruling, dated October 6, 2021, requesting parties voluntarily dismiss the complaint pursuant to Rule 4.5 of the Commission's Rules of Practice and Procedure or explain why this proceeding should not be dismissed, California American Water stated support for dismissal of this complaint as moot while MPWMD, M1W, and MCWD did not stipulate to dismissal. MPWMD objected to dismissal of this complaint as moot because the WPA had not yet been approved by the Commission or executed by California American Water.²⁴ In addition, MPWMD argued that it still had a valid allegation against California American Water for violating Section 451 of the Public Utilities Code for alleged failure to provide sufficient water to its customers on the Monterey Peninsula after December 31, 2021.²⁵ MPWMD also requested expeditious Commission approval of the WPA authorizing California American Water to execute the WPA, arguing MPWMD and M1W required the executed WPA to secure the necessary financing to timely complete the PWM Project expansion.²⁶

error during the course of proceeding); D.02-12-040 (dismissing complaint as moot when complainant's principal concern regarding location of the utility line was addressed by relocation of utility line and by Commission rulemaking addressing complainant's concern that utility employees do not properly identify themselves).

²⁴ MPWMD, M1W, MCWD Joint Case Management Statement at 2-3.

²⁵ *Id.* at 2.

²⁶ *Id.* at 2-3.

M1W stated its support for any approach the Commission would deem most expeditious to review the WPA, stressing the need for timely completion of permitting and development activities in order to begin water production by December 2023 and for the PWM Project expansion to be fully completed by early 2024.²⁷ MCWD acknowledged that while the material differences between California American Water and MPWMD had been resolved, they would not consider the matter moot until the WPA had been fully executed.²⁸

Subsequent to the filing of A.21-11-024, wherein California American Water requested approval of the WPA and related cost recovery, as well as updated water supply and demand estimates for the MPWSP, the parties remained divided regarding the need to continue this complaint. At the status conference held on December 15, 2021, MPWMD and MCWD requested the Commission stay the complaint during the pendency of the Commission's consideration of the WPA in A.21-11-024.²⁹ California American Water renewed its motion to dismiss the complaint for mootness.³⁰ M1W agreed that A.21-11-024 was the appropriate forum for review of the WPA but did not oppose holding this complaint proceeding in abeyance while the Commission considered the WPA in A.21-11-024.³¹

Upon consideration, this decision dismisses MPWMD's complaint as moot. All parties acknowledge that MPWMD's requested relief for a Commission order requiring California American Water to enter into a WPA for the PWM Project

²⁷ *Id.* at 4.

²⁸ *Id.* at 5-6.

²⁹ RT 6:1-7:20; 10:28-11:17.

³⁰ RT 7:23-10:3.

³¹ RT 10:7-25.

expansion was granted during the course of the proceeding when M1W, MPWMD, and California American Water voluntarily entered into a WPA on September 22, 2021. The Commission's consideration of the WPA for the PWM Project expansion and associated cost recovery, along with Commission consideration of updated water supply and demand estimates for the MPWSP (which will consider the adequacy of water supplies for California American Water's customers on the Monterey Peninsula) is currently before the Commission in A.21-11-024. This application is the most expeditious and procedurally proper forum for the Commission to consider approval of the WPA and its ability to meet California American Water customers' present and future water demand on the Monterey Peninsula. Accordingly, this complaint is dismissed. Case 21-05-005 is closed.

5. Assignment of Proceeding

Genevieve Shiroma is the assigned Commissioner and Zita Kline is the assigned Administrative Law Judge and Presiding Officer in this proceeding.

Findings of Fact

1. M1W, MPWMD, and the California American Water agreed on the terms of an WPA for the PWM Project expansion on September 22, 2021.
2. The Commission is considering approval of the WPA for the PWM Project expansion in A.21-11-024.
3. The Commission is considering updates to the water demand and supply estimates for California American Water's customers on the Monterey Peninsula in A.21-11-024.
4. The Commission is considering the adequacy of California American Water's water supply to its customers on the Monterey Peninsula in A.21-11-024.

Conclusions of Law

1. MPWMD's request for a Commission order for California American Water to enter into a WPA with M1W and MPWMD for the PWM Project expansion is moot and should be dismissed.
2. The Commission should consider approval of the WPA for the PWM Project expansion in A.21-11-024.
3. The Commission should consider updates to the water demand and supply estimates for California American Water's customers on the Monterey Peninsula in A.21-11-024.
4. The Commission should consider the adequacy of California American Water's water supply to its customers on the Monterey Peninsula in A.21-11-024.
5. This complaint should be dismissed.
6. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. The complaint of Monterey Peninsula Water Management District against California-American Water Company for allegedly failing to provide an adequate water supply to customers on the Monterey Peninsula is dismissed.
2. Case 21-05-005 is closed.

This order is effective today.

Dated _____, at San Francisco, California.